REMARKS

The Non-Final Office Action mailed July 27, 2009, has been received and reviewed. Prior to the present communication, claims 1-38 were pending in the subject application. All claims stand rejected. Each of claims 1–13 and 15-19 has been amended herein, while claim 8 has been cancelled. As such, claims 1–7 and 9-38 remain pending. It is submitted that no new matter has been added by way of the present amendments. Reconsideration of the subject application is respectfully requested in view of the above amendments and the following remarks.

Rejections based on 35 U.S.C. § 101

Claims 1-14 were rejected under 35 U.S.C. § 101 for being directed toward non-statutory subject matter. Specifically, claims 1-14 are allegedly software per se. As presently amended, claim 1 recites "computerized system having a processor and computer-executable instructions for automatically fulfilling orders for clinically related supplies embodied on one or more computer-storage media." Thus, the computerized system of claim 1 recites a tangible medium and is not directed at software per se. Claims 2-7 and 9-14 are also tied to a tangible medium through their dependency on claim 1. Accordingly, Applicants respectfully ask the Office to withdraw the 35 U.S.C. § 101 rejection of claims 1-7 and 9-14. The rejection of claim 8 is rendered moot by its rejection.

Claims 15-38 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Specially, claims 15-38 were rejected for being method claims that allegedly were not tied to a machine or did not transform an underlying subject matter. As presently amended, independent claims 15 and 27 have been amended to recite that at least one step is performed "at a computing device." Thus, claims 15 and 27 are tied to a machine.

Further, claims 16-26 and 28-38 are tied to a machine through their dependency on either claim 15 or 27. Accordingly, Applicants ask the Office to withdraw the 35 U.S.C. § 101 rejection of claims 15-38.

Rejections based on 35 U.S.C. § 112

Claim 12 stand rejected under 35 U.S.C. § 112 for reciting the limitation "the set of rules" without antecedent basis. Claim 12 has been amended to provide antecedent basis for "the set of rules." Accordingly, Applicants ask the Office to withdraw the 35 U.S.C. § 112 rejection of claim 12.

Rejections based on 35 U.S.C. § 103

A.) Applicable Authority

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in Graham and to provide some "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.,* 127 S. Ct. 1727 at 1741, 82 USPQ2d at 1396 (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) with approval)." *See also* MPEP § 2142. "[R]ejections on

obviousness cannot be sustained with mere conclusory statements." *Id.* Thus, in order to establish a prima facie case of obviousness the Office must provide "a clear articulation of the reason(s) why the claimed invention would have been obvious" based on factual findings made while conducting the Graham factual inquires. *See* MPEP § 2143. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. *Id.*

B.) Claims 1-38 are not rendered obvious by U.S. Patent No. 5,682,728 to DeBusk in view of U.S. Publication No. 2001/0016821 to DeBusk

Claims 1-38 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,682,728 to DeBusk (hereinafter DeBusk) in view of U.S. Publication No. 2001/0016821 to DeBusk (hereinafter DeBusk '821). As explained in more detail below, several elements of the claimed invention are not described in the combination of references. Accordingly, Applicants respectfully traverse the rejection, as hereinafter set forth.

As presently amended, the claim 1 describes a computerized system having a processor and computer-executable instructions for automatically fulfilling orders for clinically related supplies embodied on one or more computer-storage media. The system includes an interface to a supply chain engine, the supply chain engine automatically generating at least one order for clinically related supplies based upon real time supply consumption data derived from documentation of at least one clinical event generated while the clinical event is carried out, the supply consumption data including items used or consumed during the at least one clinical event. The clinical event is carried out at a clinically related site having a plurality of clinical departments. The system also includes a fulfillment engine, communicating with the interface to the supply chain engine to receive the at least one order, the fulfillment engine, determining the clinically related supplies specified in the at least one order are suitable for aggregation because

the clinically related supplies are non-time sensitive, and, without user intervention, accumulating a plurality of orders for the clinically related supplies for delivery from a vendor before triggering delivery of the clinically related supplies from the vendor. The plurality of orders are received from more than one of the plurality of clinical departments.

In contrast, the DeBusk reference, describes the management of consumable medical supplies by creating bills of material associated with care events within a clinical pathway. *See DeBusk reference* at col. 2, l. 29-37. A bill of materials representing those medical supplies "to be used" for a scheduled care event is generated and those supplies are placed into supply bundles at a number of locations and then delivered in bundled form to the end-user. *See id.* at col. 2, l. 50 to col. 3, l. 2; and col. 3, l. 34. The DeBusk reference also discloses anticipating supply usage based upon historical records relating to the frequency of occurrence of given care events at a particular facility and/or aggregated facility usage of common medical supplies over time. *See id.* at col. 2, l. 59 to col. 6, l.13. The DeBusk '821 reference describes improvements to the system described in the DeBusk reference. *See* DeBusk '821 reference.

Applicants respectfully assert that the combination of references fail to describe a fulfillment engine that determines "the clinically related supplies specified in the at least one order **are suitable for aggregation because** the clinically related supplies **are non-time sensitive**, and, without user intervention, accumulate[es] a plurality of orders for the clinically related supplies for delivery from a vendor before triggering delivery of the clinically related supplies from the vendor." Thus, the system of claim 1 accumulates orders if the orders are non-time sensitive. The orders for clinical supplies are grouped together without user intervention. In contrast, the DeBusk reference groups clinical supplies according to a procedure. Clinical items needed to perform a procedure are bundled together. *See* DeBusk reference col. 3, ll. 40-

45. The DeBusk '821 reference also bundles clinical supplies together based on procedure. *See* DeBusk '821 reference abstract. Further, the DeBusk reference does not specify that the contents of the bundles are determined without human intervention. Accordingly, the combination of references fails determine that "the clinically related supplies specified in the at least one order are suitable for aggregation because the clinically related supplies are non-time sensitive, and, without user intervention, accumulate[es] a plurality of orders for the clinically related supplies for delivery from a vendor before triggering delivery of the clinically related supplies from the vendor."

It is also respectfully submitted that the references fail to describe, either expressly or inherently, "automatically generating at least one order based upon real time supply consumption data derived from documentation of at least one clinical event generated while the clinical event is carried out." The DeBusk '821 reference describes real time supply consumption data. *See* DeBusk '821 reference [0120]. But, the real time supply data is not used to generate an order. Rather, an order for supplies is generated when a patient schedules a procedure. *See* DeBusk reference '821 [0090]. The real time supply data is used to anticipate the number clinical supplies needed over a period of time, not generate orders. *See* DeBusk reference '821 abstract. The DeBusk reference describes the management and procurement of supply bundles containing medical supplies "intended for use" in a future care event. *See DeBusk reference* at col. 5, l. 22-45. The number of bundles ordered during the year may be based on historical usage data that shows how many bundles are typically used during a period of time. *See id.* at col. 2, l. 59 to col. 6, l.13. In contrast, claim 1 describes automatically generating orders to replenish used supplies (i.e., items used and/or consumed during a clinical event) by basing the order on real time supply consumption data. Basing orders on historical

usage data, as described in the DeBusk reference, is not the same as automatically generating orders based on real time consumption data. Thus, the DeBusk reference does not describe "automatically generating at least one order based on real time supply consumption data."

Thus, Appellants respectfully suggest that the Office has not carried its burden of establishing a *prima facie* case of obviousness because the combinations of references do not describe all elements of independent claims 1. Accordingly, Appellants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection thereof. Further, each of claims 2-7 and 9-14 depends, either directly or indirectly, from independent claim 1 and defines further patentable features. Accordingly, each of these claims is allowable at least by virtue of its dependence from allowable claim 1. As such, withdrawal of the 35 U.S.C. § 103(a) rejection of claims 1-7 and 9-14 is respectfully requested.

As presently amended, claim 15 recites a method for automatically fulfilling orders for clinically related supplies. The method includes tracking, at a computing device, a clinical supply inventory at a clinically related site. The method also includes generating a pick ticket including a selection of clinically related supplies for a clinical event. The method further includes retrieving the clinically related supplies from storage and consuming the clinically related supplies during the clinical event. The method further includes updating a patient supply record in real time to generate real time supply consumption data indicating the clinically related supplies that were consumed in the clinical event. The method also includes automatically generating at least one order for the clinically related supplies based on the real time supply consumption data derived from documentation of the clinical event generated while the clinical event is carried out, the supply consumption data including items used or consumed during the at least one clinical event at the clinically related site. The method also includes determining that a

favorable purchase price for at least one of the clinical related supplies may be derived by aggregating orders for the at least one of the clinical related supplies. The method also includes determining that the at least one of the clinical related supplies is non-time sensitive. The method includes, upon said determining that the favorable purchase price may be derived and the at lest one of the clinical related supplies is non-time sensitive, without human intervention, accumulating additional orders for the at least one of the clinical related supplies prior to triggering delivery. The method also includes triggering delivery of the at least one of the clinically related supplies after accumulating multiple orders for the at least one of the clinically related supplies.

Applicants respectfully submit that the combination of references fails to describe "upon said determining that the favorable purchase price may be derived and the at lest one of the clinical related supplies is non-time sensitive, without human intervention, accumulating additional orders for the at least one of the clinical related supplies prior to triggering delivery." The DeBusk reference and the DeBusk '821 reference bundle supplies based on procedures. They do not describe accumulating supplies that are non-time sensitive and upon determining that the favorable purchase price may be derived by accumulating orders. Further, for reasons similar to those given with reference to claim 1, the combination of references do not describe "generating at least one order for the clinically related supplies based on the real time supply consumption data derived from documentation."

Thus, Appellants respectfully suggest that the Office has not carried its burden of establishing a *prima facie* case of obviousness because the combinations of references do not describe all elements of independent claims 15. Accordingly, Appellants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection thereof. Further, each of claims 16-26 depends,

either directly or indirectly, from independent claim 15 and defines further patentable features. Accordingly, each of these claims is allowable at least by virtue of its dependence from allowable claim 15. As such, withdrawal of the 35 U.S.C. § 103(a) rejection of claims 15-26 is respectfully requested.

As presently amended, claim 27 recites a method for generating a set of clinically related supplies generated for delivery. The method includes automatically generating, at a computing device, at least one order for clinically related supplies based upon real time supply consumption data derived from documentation of at least one clinical event generated while the clinical event is carried out, the supply consumption data including items used and/or consumed during the at least one clinical event at a clinically related site. The method also includes determining that a favorable purchase price for at least one of the clinical related supplies may be derived by aggregating orders for the at least one of the clinical related supplies. The method further includes, upon said determining, without human intervention, accumulating additional orders for the at least one of the clinical related supplies prior to triggering delivery. The method also includes triggering delivery of the at least one of the clinically related supplies based at least upon the at least one order for clinically related supplies.

Applicants respectfully submit that the combination of references fails to describe "upon said determining" that a favorable purchase price for at least one of the clinical related supplies may be derived by aggregating orders for the at least one of the clinical related supplies, "without human intervention, accumulating additional orders for the at least one of the clinical related supplies prior to triggering delivery." The DeBusk reference and the DeBusk '821 reference bundle supplies based on procedures. They do not describe accumulating supplies upon determining that the favorable purchase price may be derived by accumulating orders.

Further, for reasons similar to those given with reference to claim 1, the combination of references do not describe "generating, at a computing device, at least one order for clinically related supplies based upon real time supply consumption data."

Thus, Appellants respectfully suggest that the Office has not carried its burden of establishing a *prima facie* case of obviousness because the combinations of references do not describe all elements of independent claims 27. Accordingly, Appellants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection thereof. Further, each of claims 28-38 depends, either directly or indirectly, from independent claim 27 and defines further patentable features. Accordingly, each of these claims is allowable at least by virtue of its dependence from allowable claim 27. As such, withdrawal of the 35 U.S.C. § 103(a) rejection of claims 27-38 is respectfully requested.

CONCLUSION

For at least the reasons stated above, each of claims 1–7 and 9-38 is believed to be in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned—by telephone at 816.474-6550 or via email at johoward@shb.com (such communication via email is herein expressly granted)—to resolve the same prior to issuing a subsequent action.

It is believed that no fee is due in conjunction with the present communication. However, if this belief is in error, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112, referencing attorney docket number CRNI.111423.

Respectfully submitted,

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